IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 2212 OF 2005

Mr. Anil Goyel. ...Petitioner.
Vs.
State Bank of India & Anr. ...Respondents.
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Mr. Chirag Balsara i/b. Haresh Jagtiani & Asso.for the Petitioner.
Mr. N. Dhruva i/b. M. Dhruva & Co. for Respondent No.1.
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 7, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the First Respondent waives service. By consent of Counsel and at their request taken up for hearing.

2. The Petitioner has been impleaded as the Second Defendant in an application filed by the First Respondent before the Debts Recovery Tribunal at Mumbai for the recovery of a sum of Rs. 19.38 crores together with interest. The Petitioner has been impleaded in his capacity as a guarantor of the debts of the First

Defendant to the proceeding which is a Company by the name of Apeego Ltd. The claim filed by the First Respondent w allowed by the Presenting Officer of DRT-I on 12th November 2005. A decree in the amount of Rs.19,38,06,686.28 has been passed against the Petitioner together with future interest at the rate of 15% p.a.

3. The Petitioner filed an appeal against the decree before the Debts Recovery Appellate Tribunal. An application was filed for the waiver of the payment of pre-deposit of 75% of the decretal amount under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. On 21st October 2004, the DRAT condoned a delay of approximately 13 days in the institution of the appeal and recorded the statement of Counsel for the Petitioner that "he will convince his client to pay 50% of Rs.19,38,06,686.28" (emphasis supplied). A direction was accordingly issued for the payment of the aforesaid amount within a period of eight weeks. A petition was filed before this Court to challenge the aforesaid order of pre-deposit. By an order dated

17th December 2004, a Division Bench of this Court granted leave to the Petitioner to withdraw the petition with liberty to approach the Appellate Tribunal to seek a clarification in respect of the statement of his Counsel recorded in the order dated 21st October 2004. An application for review was filed before the DRAT which was dismissed by an order dated 20th December 2004. By another order dated 20th December 2004, the application for pre-deposit has been dismissed. The impugned order records that the Petitioner does not have a strong prima facie case on merits. On the question of financial hardship, it has been held thus:

> "The Appellant however has not stated anything about his financial condition. Simplicitor statement is made that he is not in a position to deposit 75% of the debt amount, but no material is placed before me to support this contention. The appellant ought to have come before this Appellate Tribunal when application under Section 21 of the RDB Act was being argued, with his Income Tax returns at least for last three years, his monthly earnings, his position in life, what is his livelihood, etc. Since that

is not done, this Appellate Tribunal has been deprived of having any glimpses into the financial position of the Appellant."

4. Counsel appearing on behalf of the Petitioner has drawn the attention of the Court to the material which was produced before the DRAT together with the application for review. In para 5 of the application there is a reference to the financial position of the Petitioner. A statement of the assets of the Petitioner is annexed as Exhibit 'A' thereto while copies of his returns of income filed for the Assessment Years 2002-03 and 2003-04 are annexed and marked as Exhibits 'D-1' and 'D-2' . The aforesaid material has been produced on the record of the Debts Recovery Appellate Tribunal. Hence the Tribunal was not justified in recording that the Petitioner has not stated anything about his financial condition and that no material has been placed on the record.

5. Whether the financial condition of the Petitioner is such as to warrant a waiver of the requirement of pre-deposit, and if so,

to what extent, is a matter for the Tribunal to consider, at least in the first instance. The Tribunal has directed the Petitioner to deposit an amount representing 50% of Rs. 19.38 crores. We are of the view that the ends of justice will be served if the Debts Recovery Appellate Tribunal is directed to reconsider the application for a waiver of the requirement of pre-deposit with reference to the material which has been produced by the Petitioner on the record in support of the plea of financial hardship. In order to facilitate a fresh order being passed, we set aside the impugned order dated 20th December 2004. Parties are directed to appear before the DRAT for receiving directions on 25th July 2005 on which date the Tribunal shall set down a time schedule for the hearing of the application. On the request of Counsel for the First Respondent, the Tribunal is requested to expedite its decision and to endeavour to do so by the end of August 2005.

6. The Petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

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